

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**MIDAMERICAN ENERGY
COMPANY, BLACK HILLS/IOWA
GAS UTILITY COMPANY, LLC d/b/a
BLACK HILLS ENERGY, IOWA
ASSOCIATION OF ELECTRIC
COOPERATIVES, INTERSTATE
POWER AND LIGHT COMPANY, and
IOWA ASSOCIATION OF
MUNICIPAL UTILITIES,****Petitioners,****V.****IOWA UTILITIES BOARD,****Respondent.**

CASE NO. CVCV064145**RULING ON MOTION TO STAY**

On August 29, 2022, the above named Petitioners filed a Motion to Stay. On September 9, 2022, the Respondent, Iowa Utilities Board (“the Board”) filed a resistance to the Motion. Petitioners filed their Reply to the Resistance on September 15, 2022. On September 22, 2022, the court held a hearing on the Motion. Mark D. Lowe appeared on behalf of Petitioner, MidAmerican Energy Company. Dennis L. Puckett appeared on behalf of Petitioner, Iowa Association of Electric Cooperatives. Adam P. Buhrman appeared on behalf of Petitioner, Black Hills Energy. Matthew J. Sowden appeared on behalf of Petitioner, Interstate Power and Light Company. Jason M. Craig appeared on behalf of Petitioner, Iowa Association of Municipal Utilities. Jon Tack and Diana S. Machir appeared on behalf of the Board. Having considered the court file, filings of parties, and arguments of counsel, the court enters the following ruling.

I. FACTUAL AND PROCEDURAL BACKGROUND

Iowa Code § 476.10A provides for a statutory assessment to fund the Iowa Energy Center (“IEC”) and the Center for Global and Regional Environmental Research (“CGRER”). Pursuant to the Statute, the Board is to assess each electric and gas utility in the state of Iowa based upon their gross revenues. Specifically, “[t]he board shall direct all gas and electric utilities to remit to the treasurer of state one-tenth of one percent of the total gross operating revenues during the last calendar year derived from their intrastate public utility operations.” *Iowa Code* § 476.10A(1)(a). By its own sunset provision, the code section was repealed July 1, 2022. This dispute centers on the Board’s assessment in the aggregate amount of \$6,098,088 in May, 2022 based upon electric and gas utility gross revenues for the 2021 calendar year. The Petitioners believe that assessment is illegal in light of the July 1, 2022 sunset provision, and that the utilities should not be required to pay it.

On June 2, 2022, Petitioners filed with the Board an objection to the Board’s assessment under Iowa Code § 476.10A. The Board issued an Order denying the objection on July 29, 2022, constituting final agency action. Petitioners filed their petition for judicial review of the Board’s order on August 12, 2022. On August 8, 2022, Petitioners filed with the Board a Motion to Stay the Board’s July 29, 2022 order pending judicial review pursuant to IUB rule 199—7.28(17A,476). The Board issued an order denying Petitioners’ stay request on August 26, 2022. The Petitioners then filed their Motion to Stay with this court on August 29, 2022.

II. LEGAL STANDARD

Iowa Code § 17A.19(5)(c) provides:

If the agency refuses to grant an application for stay or other temporary remedies ..., the court may grant relief but only after a consideration and balancing of all of the following factors:

- (1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter.
- (2) The extent to which the applicant will suffer irreparable injury if relief is not granted.
- (3) The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.
- (4) The extent to which the public interest relied on by the agency is sufficient to justify the agency's action in the circumstances.

Id. If the court determines that relief should be granted from the agency's action, it may grant a stay on appropriate terms, or grant other temporary remedies. *Iowa Code* § 17A.19(5)(d). “It is the applicant's burden to present evidence establishing the prerequisites for the stay.” *Snap-On Tools Corp. v. Schadendorf*, 757 N.W.2d 339, 342 (Iowa 2008) (citing *Grinnell Coll. v. Osborn*, 751 N.W.2d 396, 403 (Iowa 2008)).

III. ANALYSIS

The Petitioners argue that they are likely to prevail in their challenge to the Board’s May, 2022 assessment; that they will suffer irreparable injury if the assessment is not stayed; that the Board will not be substantially harmed by a stay; and that no public interest is sufficient to justify the agency's action in making the May 2022 assessment.

A. Likelihood to Prevail.

“Statutes which impose taxes are construed liberally in favor of the taxpayer and strictly against the taxing body. It must appear from the language of a statute that the tax assessed against the

taxpayer was clearly intended.” *State ex rel. Iowa Dep’t of Transp. v. Gen. Elec. Credit Corp. of Delaware*, 448 N.W.2d 335, 341 (Iowa 1989).

Here, Iowa Code § 476.10A(1)(a) provides:

The board shall direct all gas and electric utilities to remit to the treasurer of state one-tenth of one percent of the total gross operating revenues *during the last calendar year* derived from their intrastate public utility operations. The board shall by rule provide a schedule for remittances.

Id (emphasis added). In 2017, the Iowa Legislature imposed a July 1, 2022 “sunset date” for the assessment. 2017 Iowa Acts ch 169 §§ 34-38, 40. The sunset provision was codified as § 476.10A(4). In 2018, the Iowa Legislature further amended section 476.10A to reallocate appropriations from the remittances from then until the sunset of the statute. 2018 Iowa Acts ch 1172, § 91. That amendment, codified as Iowa Code § 476.10A(1)(c)(1)(a)-(d), states:

(a) *For the fiscal year beginning July 1, 2018, such remittances are appropriated to the Iowa energy center created in section 15.120.*

(b) *For the fiscal year beginning July 1, 2019, the first one million two hundred eighty-thousand dollars of such remittances shall be transferred to the general fund of the state, and the remaining amount is appropriated to the Iowa energy center created in section 15.120.*

(c) *For the fiscal year beginning July 1, 2020, the first two million nine hundred ten thousand dollars of such remittances shall be transferred to the general fund of the state, and the remaining amount is appropriated to the Iowa energy center created in section 15.120.*

(d) *For the fiscal year beginning July 1, 2021, the first three million five hundred thirty thousand dollars of such remittances shall be transferred to the general fund of the state, and the remaining amount is appropriated to the Iowa energy center created in section 15.120.*

Id (emphasis added).

Reading § 476.10A(1)(a), which calls for remittances of gross revenues from the last calendar

year, together with § 476.10A(1)(c)(1)(a)-(d), allocating annual remittances for each fiscal year beginning July 1, 2018 through July 1, 2021 inclusive, the following interpretation of the Legislature's intent appears likely:

- a) four more annual remittances were intended;
- b) remittances for the fiscal year beginning July 1, 2018 are from 2017 calendar year revenue;
- c) remittances for the fiscal year beginning July 1, 2019 are from 2018 calendar year revenue;
- d) remittances for the fiscal year beginning July 1, 2020 are from 2019 calendar year revenue;
- e) remittances for the fiscal year beginning July 1, 2021 are from 2020 calendar year revenue;
- f) no further remittances are called for under the statute which ended with the fiscal year beginning July 1, 2022; and therefor
- g) no further remittances are due from calendar year revenue after 2020.

The Board invoiced the utilities in April, 2021 for remittances from the utilities' calendar year 2020 revenue (see Exhibit B attached to Petitioners' Motion). This was the fourth remittance since the fiscal year that began July 1, 2018 (Id.).¹ Then in May, 2022, the Board invoiced the utilities for remittances from the utilities' calendar year 2021 revenue (Id). Under the above interpretation, those revenues were not intended by the Legislature to be remitted by the utilities, and are not due. Based on the record to this date, the court finds that the Petitioners are likely to prevail when the court finally disposes of the matter.

¹ This was also the second invoice submitted during the fiscal year that began on July 1, 2020, and resulted in two remittances being paid during the same fiscal year. In its Order Denying Objection to Invoice at pages 6 and 7, the Board states, "The result sought by the Objectors, rescission of the May 2022 invoices, requires the Board to not only ignore the provisions of Iowa Code § 476.10A(1)(a) prior to the repeal of Iowa Code § 476.10A, but also to leave the appropriation directed by § 476.10A(1)(c)(1)(d) unfulfilled." The appropriation going unfulfilled, however, appears to be the direct result of the Board directing two remittances to be paid in one fiscal year and the State's

B. Irreparable Injury to Petitioners and Harm to the Board.

The injury to the utilities involved is about \$6.1 million for whatever time this matter is pending. It is true that that “loss of revenue, even if substantial, does not amount to irreparable damage to support a stay of agency action pending judicial review.” *Grinnell Coll. v. Osborn*, 751 N.W.2d 396, 402 (Iowa 2008). Loss of revenue for public utilities, however, is a bit of a different animal. As the Petitioners’ note in their Motion:

For customers of municipal utilities and rural electric cooperatives, amounts assessed under section 476.10A are recovered through rates charged to the individual customers, some may be shown as a separate charge and others may be included in the rate; but all impact customer's individual bills. For rate-regulated utilities, amounts assessed under section 476.10A are recoverable through the utility’s energy efficiency plan and budget and could reduce funds otherwise available to customers to support energy efficiency activities. See Iowa Code §§ 476.6(15), 476.10A(1)(b).

(Motion to Stay filed 8/29/2022, note 6). Even so, the amount at issue is relatively small (one-tenth of one percent of the total gross operating revenues), and those amounts would be recoverable in the event the Petitioners prevail. The harm to the State of Iowa, IEC and CGRER is also relatively small, and also would be recoverable in the event the Board prevails. The court’s consideration of the injury to Petitioners and harm to the Board, which are in equipoise, does not budge the scale when balanced with the court’s consideration that the Petitioners are likely to prevail.

C. Public Interest.

The court’s consideration of the public interest relied on by the Board, as balanced with the court’s consideration of the likelihood that the Petitioners will prevail, yields a similar result as the court’s consideration of injury/harm above. No public interest justifies collecting a tax that is not owed. A stay should be granted.

V. ORDER

IT IS THE ORDER OF THE COURT that the Motion for Stay is GRANTED. The court stays the Board's July 29, 2022 order, as corrected by the Board's August 26, 2022 order, pending judicial review herein.



State of Iowa Courts

Case Number
CVCV064145

Case Title
MIDAMERICAN ENERGY COMPANY ET AL VS IOWA
UTILITIES BOARD
Type: ORDER TO STAY

So Ordered

Joseph Seidlin, District Court Judge
Fifth Judicial District of Iowa

Electronically signed on 2022-09-23 10:59:52